

IN THE SHADOW OF DEATH

Restorative Justice and Death Row Families



Elizabeth Beck Sarah Britto Arlene Andrews
Foreword by Steve Earle

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*To offenders' family members
who suffer in silence*

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Foreword

On a warm, humid Texas evening in October 1998, I stood by and watched as the state of Texas executed Jonathan Wayne Nobles. I was present mainly because, after corresponding with Jon for 11 years (along with a half dozen other inmates on death rows around the country), I was simply unprepared and unable to refuse the last request of a condemned man.

Jon was not one of the wrongfully convicted inmates that you've heard so much about in recent years. He was guilty as hell of a crime that he himself described as heinous and made no excuses for—the brutal, senseless killings of Kelley Farquhar and Mitzi Johnson-Nalley.

Standing on my left in the death chamber, holding my hand so tightly that I couldn't feel my fingertips for hours afterward, was Jon's aunt, Dona Hucka, the only blood relative who had ever come to visit him while he was in prison. His mother never made the trip. In fact she never even wrote, and Jon had only managed to locate her and say goodbye by phone the night before. Dona had driven all night from Oklahoma to be there.

A little over a year later I was back in Huntsville, outside the prison this time (thank God for small favors). The occasion was the execution of Larry Robison, and the hand that I held was that of Larry's mother, Lois, a retired third-grade schoolteacher.

Larry had begun behaving erratically and hearing voices when he was barely out of his teens. The doctors at the State Hospital for the Criminally Insane in Rusk, Texas, told Lois that though her son was indeed a paranoid schizophrenic, he was not a candidate for committal to any state-run mental health facility because he hadn't exhibited any violent behavior. A few years later Larry finally qualified. He killed his boyfriend and all four occupants of the house next door, including an 11-year-old boy. Another branch of the same Texas government cited "the rights of victims" when they found Larry competent to stand trial and sentenced him to death.

When it was all over Lois cried on my shoulder for a minute or two and then took a deep breath and wiped her face. Then she and her husband, Ken, almost immediately turned their attention to another prison facility on the other side of town where Lois's surviving son was serving a sentence for

assault and robbery. From the beginning of his incarceration, Larry's younger brother, Steve, had endured verbal abuse from both inmates and corrections officers as the brother of a condemned child killer, and Lois feared that he would break under the pressure and "do something stupid" as she put it and endanger his chances at an upcoming parole hearing.

No one involved in the anti-death penalty movement in Tennessee will ever forget the family of Robert Glen Coe. Coe was handpicked by death penalty proponents in the government of Tennessee to be the first inmate executed by the state in over 40 years. There were other inmates who had been on death row longer, many of whom had long ago exhausted their legal options. But Coe's case was perfect from a public relations standpoint; he was white (defusing any charges of racial bias), he had confessed (making his case, at least in the eyes of the public, open and shut), and the crime he had been convicted of committing was sufficiently heinous—the kidnapping, rape, and murder of 8-year-old Cary Ann Medlin. In preparing for the execution the state had developed elaborate contingencies for the accommodation of witnesses. When the killing was over, members of the press and the Medlin family were ushered before the array of cameras and microphones that had been set up in the prison parking lot. Coe's brothers and sisters were offered no media access whatsoever and promptly escorted off prison property.

The victims' rights movement in this country is predicated on "humanizing" the stories of the family members of victims of violent crimes. They are dragged through the courts again and again, during every stage of a legal process that is necessarily exhaustive. When life and death are at stake, we the people owe it to ourselves to practice due diligence. The prosecutors will tell these folks who have already endured more than any human being should ever have to suffer that they honor the memory of their loved ones and that in the end they will receive closure.

I have encountered hundreds of victims' family members over my years of work against capital punishment. Most angrily denounced the activities of my fellow activists and myself from the other side of a police line, and I learned years ago that any attitude other than complete and total respect for their pain and their anger was counterproductive to the cause to which I've devoted most of my adult life. Sometimes they were on my side and for various reasons had chosen to deal with their grief by working to bring about an end to what they perceived as a cycle of violence that is pervasive in our society. Numerous support groups and membership organizations exist for murder victims' families today, whichever side of the street that they stand on.

But what about the Dona Huckas and the Robisons and the Coes? What about the hundreds of mothers, fathers, husbands, wives, brothers, sisters, sons, and daughters of Americans executed in this country every year? Most are innocent of any crime. All will carry the stigma of having been related to a "monster" with them for the rest of their lives. The guilt. The shame. They will bear all of this as well as the loss of their loved ones when the executioner pushes the button or pulls the trigger or flips the switch.

Is their anguish any less legitimate than that of the victims of the violent acts committed by the members of their families? Do we as a society even care?

In the following pages, the authors show us exactly why we should care about these families. They, too, have held hands and watched switches flip, but their work here moves beyond bearing witness. By letting the Dona Huckas, the Robisons, and the Coes of the world tell their own stories, they're creating space in our justice system for true reform and, in turn, true healing. We the people, they argue, bear responsibility not only for punishing criminals but also for repairing the lives of our fellow community members devastated by crime. Their vision of restorative justice brings everyone—victims or survivors and their families, offenders and their families, criminal justice professionals, and community stakeholders—to the table and out of the death chamber.

—Steve Earle
New York
April 2006

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Acknowledgments

This book was a labor of love, which was made possible because of the support and generosity of so many people. Foremost we are indebted to all of the family members of offenders, who opened their homes, hearts, and wounds to us, and to the offenders, who were brave enough to talk with us. They shared their stories in the belief that it could make a difference for other families and society.

To the advocates who told us about their work with the family members of offenders and victims, we appreciate your time and all that you do to help others: Renny Cushing, Sandra Jones, Bruce and Julie Person, Bill Pelke, Susannah Sheffer, Peggy Sims, and Ed and Mary Ruth Weir. Dick Burr, Tammy Krause, Pamela Blume Leonard, and Howard Zehr have shown us that there is room for restorative justice in the traditional justice system, even in capital cases, and we are honored to share their work.

Numerous lawyers helped in the creation of this work by trusting us to talk with their clients, helping us make connections to offenders' family members, sharing their own stories with us, and reviewing vignettes and descriptions of particular cases for accuracy and for their inspirational work in the field. We owe special thanks to David Bruck and John Blume, who taught Arlene and countless others across the nation about family history and concerns in the legal and public arenas. We also particularly thank the dedicated individuals who comprised the former Georgia Multi-County Public Defenders' office, including the director Michael Mears (now the Public Defender Standards Council and the Georgia Capital Defender) and the Southern Center for Human Rights, including their former director Steven Bright. Other attorneys and defense team members who provided us support, insights, and stories along the way include Rachel Chmiel, Robert Lominack, Charlotta Norby, William Montross, Theresa Norris, Margaret O'Donnell, Mathew Rubenstein, Charlie, Sally, and most especially Timothy Floyd. We are also grateful to those who have mentored us in the mitigation process and showed us how to find the humanity in frailty, particularly Pamela Blume Leonard, Scharlotte Holdman, David Freedman, and Kathy Wayland.

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A special thanks to Steve Earle for the foreword to this book and for his undying advocacy for the rights of the oppressed, and to Pamela Blume Leonard for the afterword and for bringing the experience of offenders' families to us—without her there would be no book.

For everyone else who we have not listed, we appreciate your support and assistance with this project. Each of you helped to make this project better. We are solely responsible for any mistakes.

My life has been touched by the family members with whom I spoke and I will always carry a debt of gratitude to them. My debt to them is matched only by my debt to my own family. My mother, Isabel, has given me several lifetimes of support, as well as wisdom and the ability to work hard. My late father, Carl, gave me courage and the best parts of my soul. For my husband, Steve, this book is as much yours as mine; your calm, love, and constant belief in me make it so, and if that is not enough—I owe you for bringing rescue dog Francie to our home just when I wanted her least and needed her most. During my work on this book I thought about Ethan and how my parents gave me what I needed to do this and much more and how his amazing parents will do the same.

—*Elizabeth*

Writing this book highlighted the tapestry of human experiences, connections, and emotions that constitute family. My thanks to my family who is a constant source of love and support; my father, Paul, whose work ethic and academic example has always guided my work; my husband, Marwin, who makes me laugh and supplies me with everyday reminders that the world is a beautiful place; my siblings—friends I was fortunate enough to be born with, and my mother, Eva, who taught me the secret to life—forgiveness.

—*Sarah*

I learned about families who face death first from my husband, Stuart Andrews, who, soon after our marriage, took 2 weeks' leave from his regular job to tromp through cornfields and interview Klan members as he reconstructed a defendant's life history. Kathy Wayland and Scharlotte Holdman, mitigation specialists extraordinaire, have encouraged and taught me to explore deeply into the lives and social networks of people who face death.

—*Arlene*

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Note to Readers

This is not a typical book about the death penalty debate that focuses specifically on the pros and cons of capital punishment. Rather, our purpose is to highlight the experiences of capital offenders' family members. And while the many issues offenders' family members face will certainly add crucial elements to any debate about the death penalty, this is not the *raison d'être* of this book. Offenders' family members are important in their own right, and their stories and experiences provide insight into the complicated nature of the human condition. Though most readers will hopefully never have to experience the tragedy of either losing a loved one to murder or losing a loved one through capital punishment, many of us can relate as professionals working with or within the criminal justice or mental health system, parents, siblings, and community members to the many perspectives on guilt, vengeance, mercy, and forgiveness that are explored herein.

Throughout the book our exploration occurs within the constraint of the present criminal justice system—which, for better or worse, includes the death penalty. Our exploration is rooted in both the lived experiences of offenders' family members who were interviewed for this book and restorative justice theory, which views violent crime as an extreme violation of relationships and tries to find ways to hold offenders personally accountable while also addressing the needs of victims, offenders, and communities that arise from crime. The restorative justice-based policy suggestions examined throughout this book may lead to a reexamination of the utility of the death penalty for society, but even in the absence of a change in death penalty policy, numerous social issues related to the harms experienced by family members of offenders should not be ignored.

We hope that many different audiences will read and discuss this book, including

- Prosecutors and defense attorneys who frequently struggle with ways to honor the lives of victims throughout murder trials, do no further harm to victims, and address tremendous wrongs;

- Social workers, psychotherapists, and victim advocates who work with family members of both victims and offenders in their efforts to cope with murder and its aftermath;
- Criminal justice practitioners whose charge it is to represent the state in their interactions with the offender, victims' family members, and offenders' family members;
- Students of criminology, criminal justice, social work, sociology, psychology, and restorative justice who wish to begin to understand crime and punishment from a very personal perspective;
- Victims' family members who have suffered tremendously from the consequences of violent crime;
- Offenders' family members who are forced to deal with guilt, shame, anger, and love for their loved one as they face the isolating and at times debilitating process of their family members' trial and execution; and finally,
- Members of the general public who play critical roles in their communities where many social problems that lead to crime can be addressed.

Authors

Each of us came to writing this book after years of working with issues related to crime, social problems, and punishment. Two of the authors, Arlene Andrews and Elizabeth Beck, had professional experience working with family members of offenders on death penalty cases before the data collection for this book began. Elizabeth has worked as a consultant, mitigation specialist, and expert witness in developing offenders' psychosocial histories, which are used in the sentencing phase of death penalty trials. Most recently Elizabeth has worked with David Freedman to explore the impact of neighborhoods on offenders' development. Arlene has been an expert witness regarding the impact of child history on adult behavior in numerous death penalty trials in several states. In their work, Elizabeth and Arlene review records from schools, health care providers, child welfare agencies, juvenile and criminal justice systems, employers, military service, and other organizations involved in the defendant's life. They have interviewed numerous people who knew the defendant, including their primary caregivers, extended family, neighbors, teachers, social workers, foster parents, and a range of others familiar with the defendant.¹

Sarah Britto has worked on several data collection projects, including the Capital Jurors Project in Florida that interviewed jury members in capital cases, and she has led research projects investigating the media's effect on fear of crime, punitive attitudes, civic engagement, and public policy. In reviewing the existing theory and research on restorative justice, she was inspired by the ethical grounding of this approach to justice and the promising results indicated in the literature.

Our work and research experience helped shape the data collection and theoretical orientation of this book. This work also guides our views regarding the social problem of violent crime, and although we try to guard against these particular subjectivities influencing our data collection efforts, these perceptions cannot help but shape the types of questions included in our interviews. These same experiences also aided us in gaining both access and acceptance among individuals that we interviewed.

Throughout our research, we offered every participant in our study the promise of confidentiality. Most individuals desired this discretion. Throughout the book when we refer to an individual by their first name only, we use a pseudonym. A few of the people that we interviewed wanted to have their real names published with their stories. For them we use both their first and last (real) names.

We interviewed 24 family members, and we held 2 focus groups with 12 individuals. We then interviewed 18 additional family members because they represented a specific experience, such as being children of the condemned, relatives of someone who was taken off death row, or family members who have become politically active. We also reviewed the social histories of 14 additional defendants whose legal team prepared mitigation evidence for sentencing in a death penalty trial.² Altogether, 55 families are represented, and their stories animate this book. We also talked with defense team members and leaders in restorative justice and the death penalty abolition movement. When conducting the interviews, we relied on the memories of the people that we talked with as well as their interpretation of events, and because both are fallible it is important to acknowledge this limitation. In cases involving longer narratives or specific legal information, we often verified the facts with a lawyer who was familiar with the case.

Two of the individual offenders found in the case studies are women, but because 97% of the individuals on death row and nearly all of the offenders throughout this book are male, we use that pronoun when we speak of offenders.³ See appendix A for a detailed description of our research methodology.

Including Offenders' Families in Restorative Justice

Throughout the book we do not talk extensively about the death penalty debate or specific legal issues but focus on the offenders' family members and how they may fit into restorative justice practice. Before we begin this discussion, a brief review of several landmark Supreme Court cases that have shaped the current application of the death penalty cases is offered for the reader to understand the basic context of offenders' family members' lives. In the United States, the death penalty has been a part of our criminal justice system since its inception with the brief exception of the time period between the *Furman v. Georgia* Supreme Court decision and the *Gregg v. Georgia* decision.⁴ In *Furman* the Supreme Court ruled that then-current death penalty

law was unconstitutional because of the “arbitrary and capricious” nature of its application. Following *Furman*, 38 states and the federal government revised their death penalty statutes in an effort to ensure the fair application of the death penalty; specifically, trials were bifurcated to provide for a guilt phase where the guilt of a defendant is ruled on and then a separate sentencing stage where mitigating and aggravating circumstances can be presented to the court. *Gregg* provided a test of these new laws and effectively reestablished the death penalty in the United States in 1976. Numerous cases have since restricted the application of the death penalty, including no mandatory death penalty laws,⁵ no death penalty in rape cases without an accompanying murder,⁶ no death penalty for the mentally retarded,⁷ and most recently no death penalty for individuals who committed the offense as a minor.⁸ For readers who are interested, Appendix B provides an overview of the typical legal process in a death penalty case.

Though each of these cases represents legal precedents to most of us, to the offenders’ family members the cases represent the life of their loved ones. Many social workers, counselors, and psychologists have long known that one of the first steps to healing, be it a societal ill or a personal nightmare, is storytelling. We listened to the stories of family members as they described life in the shadow of death and retell these stories. To contextualize their stories, we bring in research from social work, psychology, and criminal justice in the hope that examining how violent crime and capital punishment affect the lives of offenders’ family members. We aim to provide insight into these and other social problems.

We place these stories in a discussion of healing the harm created by crime, and to do this we use the framework of restorative justice. Howard Zehr’s seminal work on restorative justice theory, *Changing Lenses*, asked many readers to reexamine the notion of justice from the perspective of the “needs” of the involved parties.⁹ Restorative justice posits that all individuals who are harmed by a crime have a right to voice their stories, receive help in meeting their needs resulting from the crime, and be included in the criminal justice process. Traditionally, restorative justice solutions attempt to meet the needs of victims, offenders, or community members, parties who are often called stakeholders, while still holding the offender accountable for the crime. From the reexamination of justice spurred by Zehr’s book, hundreds of restorative justice programs have developed throughout the United States.

We believe it is time to again reexamine the issue of justice by including the perspectives of offenders’ family members. Continuing in Zehr’s tradition of building restorative justice theory, we ask readers to look through a different lens and examine the death penalty from the perspective of offenders’ family members.

Structure of the Book

Restorative justice frames this 12-chapter book, divided into 3 parts. Part I introduces the reader to life in the shadow of death, restorative justice

theory, and the family members of offenders in death penalty cases. We explore what these family members mean for social work, law, criminal justice, and sociology as well as for the larger philosophical study of a just society. In chapter 1 we discuss both the problems faced by offenders' families and why these issues are important to the understanding of justice in the United States. In chapter 2 we briefly trace the history of the restorative justice movement and discuss it in the context of death row families. Although it is obvious why victims' family members are central to a discussion of restorative justice, we make a case for including family members of capital offenders in restorative justice. Chapter 3 provides an in-depth portrayal of the multigenerational psychosocial histories of offenders' family members. We illustrate the deeply rooted pain haunting these families, which provides insight into them as individuals and into the homes that the capital offenders came from. Director of Investigation and Mitigation at the New York Capital Defender Office Russ Stetler has said that the answers to crime prevention are in these histories.

Part II captures stories, often in the family members' own words, and unearths the harms experienced by family members of capital offenders. Restorative justice theory posits that the first step to providing justice after a crime has been committed is to establish who has been harmed. These harms provide the groundwork to explore offenders' family members' needs. In chapter 4, we examine the various ways in which family members have been pronounced guilty and feel punished by society, the criminal justice system, and their communities. In chapter 5 we accompany a mother through the execution of her son and hear from other families whose lives have been destroyed by an execution. Chapter 6 recounts the voices of both minor and adult children and siblings of offenders. Some of the children were too young to understand the implications of their father's or brother's death sentence, whereas others stood by as he was executed. From grief to depression to post-traumatic stress disorder (PTSD), in chapter 7 we examine mental health issues and coping strategies as families struggle through the arrest, trial, sentencing, and execution of their loved one.

In part III we move beyond storytelling to examine the promise and problems of utilizing restorative justice solutions in capital cases. Chapter 8 explores how life changes when a death sentence is overturned through either commutation or exoneration. Family members talk about the impact of their loved one's commutation from death to life without parole. Readers will meet Joseph Amrine, an innocent man who spent 16 years on death row. Finally, in a unique case of restorative justice in action, convicted murderer William Neal Moore talks about the commutation of his death sentence and eventual parole that was made possible by the efforts of the victim's family members.

In chapter 9 we chronicle family members of victims and offenders who have organized at the local, state, and national levels. We also explore organizations that have provided support to death row families. Chapter 10 examines several ways restorative justice can touch capital cases, including

defense-initiated victim outreach, a pioneering strategy that seeks to engage victims' family members and capital offenders in a restorative response to criminal proceedings. In chapter 11 we explore the role of the community in restorative justice and examine the ways institutions such as educational and mental health systems within the community have failed offenders and their families. We provide innovative models for addressing the harm associated with institutional failure and for bringing communities into the restorative process. In chapter 12 we look to the future and explore the many ways that restorative justice policy initiatives can help meet the needs of victim and offender families, offenders, and their communities.

We have also included two appendixes that elaborate on our research methodology and the basic operation of the criminal justice system in death penalty cases. Appendix A summarizes the interview, focus group, and case study methodology we used to gather and analyze information about capital offenders' families. Appendix B examines the process of a death penalty trial to provide a logical backdrop for the psychological journey these family members document for us.

Participants

Following is a synopsis of the 24 family members who participated in the general interview. Not included are family members who participated in the focus groups or were interviewed for a specific reason such as being a minor child of a death row inmate. Also not included are the 14 psychosocial histories that were used in the writing of this book.

Mothers

Barbara Longworth loves to laugh. Caucasian, in her mid-60s, she raised her children in a middle-class home. But since the death of her husband following her son's death sentence, her income level has dropped. Barbara worked for 25 years taking care of severely handicapped children in her home. Before her son was executed in 2005, Barbara never missed a visit to him in prison.

Betty never completed high school because she was forced to marry at age 14. She is Caucasian and in her mid-50s. Her husband beat her and her son horrifically; ultimately her son, Gale, killed his father. Gale is the "apple of her eye," and she visits him regularly in prison. Her son chose to forgo a jury trial and instead was tried before a judge who sentenced him to life without the possibility of parole.

Bridget, in her mid-50s, is an African American woman who lives in public housing and collects Social Security disability because of several physical and psychiatric disorders. She is very connected to her extended family and loves her son, Toby. She talks to him on the phone from death row as much as her money permits and saves her pennies to visit him.

Celia McWee is Latina and in her early 80s, though no one would believe her age if they saw her. She and her husband both worked professional jobs and raised three children. Her daughter died when she was in her 20s. Celia adored her son, Jerry, and has struggled emotionally since his execution in 2004.

Charlene is an African American woman living on Social Security disability. She presently takes care of her grandchildren. She visits her son, Travis, when her health allows. She has cancer and several other serious conditions and copes with life's hardships through her belief in Jesus Christ. She believes that the facts of her son's case will never be known because he agreed to a plea of life without the possibility of parole. For Charlene and her son, the possibility of the death penalty was so horrible that it left no other choice. She believes that her son may have played a minor role in the murder of which he is convicted.

Franny, who is Caucasian, was married at age 15 to escape the abject poverty of her family's home. Now in her mid-50s, she works at a convenience store and has recently remarried. She adores her son, Martin, and speaks to him regularly, but she seldom visits him in prison because she finds the visits incredibly stressful. Franny is very thankful that her son is not on death row, though he is serving a sentence of life without the possibility of parole.

Rose lives in an impoverished and isolated rural area and is a Caucasian woman in her 70s who did not graduate from high school. Though her husband was mentally ill, Rose had no idea what that meant and sought help for him from the snake handlers in their church. Rose loves her son, George, and visits him on death row when she can, but the prison is several hours away, and because of her age and income the trip can be very burdensome.

Georgia is a low-income African American woman who never finished high school and supplements her income by cleaning houses. She and her oldest daughter live together so that they can share the rent. Georgia is deeply religious and visits her son, Kenneth, on death row almost every week.

Jennifer, a middle-class Caucasian woman with a college degree is putting her daughter through college and regularly visits her son, Edward, in prison. She believes that he is innocent and that he did not get a fair trial because he chose to accept a plea bargain out of fear of a death sentence.

Marion, an economically struggling Caucasian woman who once lost her home, is in school trying to get her associate's degree in computers. She is in her 50s, and for many years she was married to an abusive man. Marion has spent a great deal of time in therapy getting over her past, which included abuse and incest. Marion loves her son, Mitchell, and visits him often on death row, though sometimes the visits can be tense because mother and son do not always agree and can be very critical of each other.

Mary is a small Caucasian woman in her 80s. She and her husband were in the middle class, and she was a stay-at-home mother while her husband was in the military. When her husband retired, he became a school administrator. She had one son who died in the Vietnam War and another who

committed suicide. Her third son, William, is on death row, and she visits him every week that she can.

Pearl, an African American woman in her early 60s, is living on fixed income from her Social Security checks following a work-related injury. She had a daughter who was killed in a car accident in her late teens, and she is active in her church. She visits her son, Gilbert, who she loves, whenever she can get a ride to the prison since she cannot afford a car. Gilbert served close to 10 years on death row until he received a second trial, which led to a sentence of life without parole.

Sarah, a middle-aged, low-income African American woman, raised two children on a job that paid less than minimum wage. She is religious and active in her church. Her son Marcus's defense team speculates that she may have a substandard IQ. Sarah says she loves Marcus unconditionally but does not understand who he is after he became mentally ill. Lack of reliable transportation keeps Sarah from visiting her son on death row.

Vera, a Caucasian woman in her mid-50s, is a public servant. She and her husband have a loving relationship, which they are now sharing with their granddaughter Kelly, the offender's daughter, who lives with them. Vera describes her family as a loving, touchy-feely one. She is very active in her granddaughter's after-school activities and is on the fundraising committee of the PTA.

Fathers

Karl is Caucasian and loves to cook for his three children, who he raised on his own as his wife died when his youngest was an infant. He once owned a small store and sold crafts that he made, but now he is in poor health, with emphysema and other lung-related illnesses. His family is extremely close, and one of his friends says that Karl would move in with his son, Nathaniel, if the prison would let him.

Matt is a college-educated, middle-class Caucasian man who raised three children. He is active with his grandchildren and was a leader in his church before his son's arrest. Matt and his son, Tony, were very close, and Matt and his wife visited their son regularly before his execution. His wife has not been the same since her son was killed, and he has sought counseling for his own depression.

Grandparent

Ivan, a middle-class artist, is also a survivor of a Nazi work camp who is in his 70s and in failing health. He helped raise his grandson, Timothy, the offender, because Timothy's mother had a debilitating illness. Ivan is very close to his grandson and is thrilled that he did not receive a death sentence. When Ivan's health permits, he visits Timothy regularly.

Siblings

Paul quit college when his brother was arrested. Now a store manager, he hopes to go back to school. He grew up in a working-class home and recently married. Because his brother, Jeremy, did not get the death penalty, Paul believes that justice has been served and understands that his brother will not get out of prison. The two seldom communicate.

Bonnie Coe grew up in severe poverty. Today she lives in subsidized housing and collects Social Security disability payments. She loved her brother, Robert, but seldom visited him in prison because she could not afford the trip. Today she is active in her church and very much misses Robert since his execution.

Mark is a middle-class African American man in his mid-40s. He grew up in a loving home with nine siblings. He and most of his brothers and sisters have gone to college. Mark did not visit his brother, David, often because David's severe mental illness often made him difficult to be around. Today Mark does public speaking on the death penalty and his brother.

Jan, married to a minister, is a middle-class African American woman in her 40s who is raising two boys. Like her husband, she graduated from college and works a professional job. She visited her brother, Adam, in prison when she could and misses him terribly since his execution. She believes that Adam's wisdom and dignity have given her the strength to withstand the pain of losing him.

Adult Children

Felicia Floyd is in her mid-30s, and she is married with two children. She is middle class with a master's degree and owns a small business. Before her father, Fred, was executed, she visited him regularly, but she maintained a level of distance from him to protect herself from the emotions associated with his impending execution, which occurred in 2001.

Cousin

Pat Seaborn, a retired Caucasian woman in her late 60s, has some college education, is middle class, and has been happily married for many years. She and her cousin, Ron, grew up in the same neighborhood, and she was terrified of her uncle, who used to beat Ron. Pat enjoyed her cousin's company and admired his intelligence. She was with him on the day of his execution.

Aunt

Patty is a very warm and spirited African American woman who likes to laugh. She owns a small home and is working class. She lives in a small town that she describes as very racist. After her sister died, she became the primary support person for her nephew, Luke, who she loved and has missed since his execution.

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Part I

Shadow of Death

The effects of the death penalty on family members of capital offenders is a relatively new discussion in the literature and within the anti-death penalty community, which consists of lawyers who work on death penalty cases and those working to abolish the death penalty. It is particularly rare to see both restorative justice and capital punishment talked about together, yet we believe it is critical—to society, to the integrity of the justice system, and to the family members themselves—to explore the effects of a capital trial on family members and to bring these family members into a restorative justice process.

Because of the newness of applying restorative justice principles to death penalty cases, part I of this book provides background. The first chapter begins with an examination of what it means to live in the shadow of death because a loved one has been charged with a capital offense and explores why family members of capital offenders should matter to society. In this discussion it becomes clear that the death penalty is different for offenders' family members than any other form of punishment in the United States, and the punitive difference between life without parole and a death sentence is often borne by offenders' family members.

Restorative justice is most frequently used in nonviolent cases. In chapter 2 we provide an introductory rationale for its application to death penalty cases. We introduce the basic theoretical assumptions and stakeholders involved in typical restorative justice practice and argue that these assumptions can apply to murder cases and that the definition of stakeholder should be expanded to include offenders' family members. We explore restorative justice through real-life examples—stories of victims, offenders, and communities who come together to face the tragedy of murder and other serious crimes—and by examining key theoretical principles that explain why these processes may provide all involved with a sense of justice. Chapter 2 also highlights the research findings based on several restorative justice initiatives.

As individuals we have rich and multifaceted backgrounds that are based on our experiences, values, family, ethnicity, and a multitude of other

factors. In chapter 3 we introduce many themes common in offenders' family members' backgrounds. Through short illustrations and longer vignettes, we tell about their childhoods, the turbulence of their experience with violence or mental illness, and their struggles with their loved one, the offender.

Our intention is that the first three chapters give readers an introduction to the experiences of offenders' family members and restorative justice. This introduction should help readers move forward in the book and critically examine their own ideas regarding restorative justice, its promises, pitfalls, and potential utility to help heal the wounds of violent crime.

1

Why Do Offenders' Families Matter?

The press called Martin's actions a "crime spree." Already convicted of armed robbery, Martin was facing the death penalty. In less than 2 weeks the jury would decide his fate, which his adoptive father, Phillip, felt powerless to influence. Phillip's faith in the criminal justice system had been shattered by the callousness of Martin's court-appointed attorney. Terrified that his son would be sentenced to die, Phillip did the only thing he felt he could do: in an act of faith and desperation, he asked God to take his life and spare his son's. In his garage with the car running, Phillip made the ultimate sacrifice to spare his son the ultimate punishment—he took his own life in a seemingly illogical effort to save his son. Unexpectedly his suicide turned out to be Martin's second chance at life. The jury, moved by Martin's loss, spared his life.

Learning that a loved one may have committed a horrible crime can rip a family apart. The death penalty is sanctioned in 32 states, the military, the federal criminal justice system of the United States, and nearly half of the countries around the world. In these places, while an offender's family reels from the impact of charges of a violent crime and as they begin to face their own feelings of anguish and powerlessness, family members must also confront the prospect of their loved one's death by execution.

When prosecutors decide to seek the death penalty in capital crimes, offenders' family members begin a new stage in their own lives, which they live in the shadow of death. This shadow covers all aspects of their lives and also influences how other people treat them. The knowledge that the state is seeking to execute their loved one and the reality of their impending loss changes family members' lives in numerous detrimental ways. Many suffer severe depression and trauma, face enormous financial challenges, and have difficulty participating in their own families and communities. Despite the fact that their lives are intertwined with the very public death penalty process and consequences, they are voiceless in the process. Perhaps the most insidious part of living in the shadow of death is the feeling that no matter what they do, few people care to see them, hear them, or extend compassion to them.

We do not want to minimize the anguish of crime victims or the horror of violence by drawing attention to offenders' family members; perhaps

the worst experience a human being can imagine is the violent death of a child or the murder of a parent. Society aches for children who are lost to violence and grieves for sons and daughters who are robbed of their parents and hearts go out to their siblings and grandparents. We affirm that offenders should be held accountable and honor the rights of the victims to pursue justice, but our belief is that utilizing restorative justice to supplement the traditional justice system better meets these goals.

We maintain that crime victims' and offenders' family members, although deeply divided by violent crime, have similar experiences, including shared grief over the loss of the victim, isolation, trauma, depression, and frustration with the criminal justice system. Our work is driven by the belief that society's understanding of crime and punishment can be improved by exploring the effects of a capital charge on offenders' family members and that the pain of these relatives must be acknowledged and addressed to right larger societal wrongs.

The family members that we talked with represent individuals, long overlooked, who did not commit murder and yet are severely harmed by their interactions with the criminal justice system. In many ways the repercussions of the punishment of their loved one is internalized, and they, too, "feel punished by society." Family members' psychological and emotional responses to the crime and punishment often leave them depressed, and their feelings of fear, helplessness, and horror invoke trauma. One mother said, "There are no good days; there are days that are bearable and then the rest." Another mother described her life following her son's arrest and conviction as spent "pacing and crying, crying and pacing."

The media and the community can inflict further damage. The father of an accused inmate realized that "You [and your family] are viewed as guilty as soon as your son is arrested." A mother explained that when she left her house she felt scared because "You feel like someone is going to do something to you." This feeling of condemnation drives many families into isolation, and their isolation is reinforced at the trial, where the courtroom itself divides supporters of the offender and supporters of the victims.

Offenders' Families Matter

Readers may question why offenders' families matter and why they should be included in a discussion of justice and capital punishment. Indeed, there may be readers who believe that it is appropriate for the family members to feel condemned. Some might think that the offender's family is complicit in the crime because they raised a criminal, and others may lack sympathy for parents who raised children in abusive conditions. Some readers may support the notion of an eye for an eye, and given the suffering of the victim's family, they may see the offender's family members' pain as an appropriate extension.

Because murder and the death penalty bring up raw emotions, the perspectives of the offenders' family members are often overshadowed, and their pain has been lost in traditional discussions of capital punishment. Once a brother, sister, son, daughter, husband, wife, father, or mother commits a crime, the public regards him or her as a defendant, convicted felon, offender, or inmate.¹ To condemn his life, the prosecutor portrays his life as worthless. However, to family members he is still their child, father, brother, uncle, or nephew. They see him as a complex person who has done something terrible but is still human. Family members may be hurt by their loved one's actions, even enraged, but often their love is fundamentally unchanged.

Consider Sarah. Throughout her children's lives, this mother of three worked in the kitchen of her local nursing home. In 1998, her son Marcus killed the owner of the convenience store where she often bought a thing or two after work. When she fell short of money, the shopkeeper would front her what she needed; she considered him a friend. She mourned his loss and was devastated that it was her son who took his life. "He was my friend!" she incredulously repeated as she tried to grasp the magnitude of the situation. Still, she said of her son, "You don't stop loving him. You can't; that's not what a mother does." She blamed Marcus, and she blamed herself. She thought she had been a good mother because she loved him, cared for him, and met his basic needs, but when the crime occurred, none of that seemed real. Following Marcus's arrest, Sarah had to negotiate many feelings toward her son: concern, love, anger for his actions, confusion about mental illness, and her own feelings of torment on hearing his death sentence.

Offenders' families matter because, like Sarah, the loss of their loved one is personal. She was a hard worker, active in her community, and at the time of the interview she was raising her daughter's son as well. After the crime, her life began a downward spiral. She became depressed, was barely able to work, and lost the will to live. Perhaps most important, her depression took its toll on her grandson's life because she could no longer provide him with adequate care.

Family members matter because children are affected by the death penalty. We talked with several children of the condemned, some too young to comprehend why anyone would want to kill their "daddy" and others very aware of what a death sentence means. One adult child of an offender, whose father was arrested when she was a preteen, noted, "We live our lives under the black cloud of execution." Although research describing the negative effects of incarceration on children abounds, this is one of the first discussions of what it means to be a child of a parent on death row. Children of the condemned experience all the pain that a child of an incarcerated parent does, with another layer, unimaginable in its heaviness, heaped on their small shoulders.

Often family members are forced to simultaneously manage the effects of a death sentence and the parenting of other minor children. At best, the arrest keeps the parent distracted; at worst, the pain and anger that the family members experience influence the level of care they can give the

children and changes the emotional context of the child's home life and development. Not only do these young siblings mourn the separation from their loved ones, but also they often feel the need to take care of and protect their mothers or fathers. The children often watch helplessly as all of their once-protective relationships begin to crumble.

Phillip, who took his life in his garage, was not the only family member who lost his desire to live. Nineteen-year-old Eliot was tried in a death penalty case in 1998. He and his younger brother, Brad, had always been very close. They supported each other through their father's abuse and tried to shield their mother from his violence. When Eliot received a death sentence, Brad, who was attending and doing well in college, was devastated. His mother, paralyzed by her own grief and confusion, was unable to support him. Brad attempted suicide. His mother saw Brad's suicide attempt as a wake-up call, but admitted that she remained too wrapped up in her own trauma to effectively reach out to him.

Not surprisingly, children in many families affected by a capital sentence are faring poorly. Some, like Brad, have harmed themselves or dropped out of school, and others become angry and destructive. Research suggests that because their parents are in prison, these children are at an elevated risk of entering the criminal justice system as offenders.²

Family members of capital offenders matter because the U.S. Constitution rests on principles of fairness and seeks to promote citizens' confidence in their government. Parents, siblings, cousins, and other relatives of capital offenders confront a strange dilemma as they address the moral development of their own children. They want their children to have respect for authority and the principles of justice, and yet their anger at the system often dominates their existence. They see the court system as stacked against them and view some policies and practices as gratuitous in their meanness. When the state tries to put their loved ones to death, the entire family system develops ambivalent or even hostile feelings toward their government and the justice system. When entire families lose faith in the criminal justice system, participatory democracy becomes increasingly difficult.

Family members matter because, when healthy, their contributions help sustain communities. A prime example is Barbara Longworth,³ whose son Richard was recently executed for a capital crime. Since the time Richard was a child, Barbara has taken care of children with developmental and physical disabilities. Justin, one such child, has been with Barbara for 22 years, and though his speech is severely limited, he refers to Barbara as "Mom." She feeds him, bathes him, puts him to bed, and changes his diapers. She also comforts him when he is sad, and the two of them are often found sharing a laugh. Barbara's whole family views him as one of their own. The bond between Barbara and Justin is palpable, and the love must be making a difference because Justin's disabilities are so severe that he was not expected to live past puberty. Although Barbara was forced to give up another child

due to the stress of Richard's incarceration, she continues to care for and love Justin as a son. Many other family members of offenders have faced similar challenges and choose to cut back on or withdraw from their community service work, either to focus on their loved one's case or because they were too depressed to participate.

Offenders' families represent a variety of backgrounds. Noted *New York Times* journalist Jason DeParle remembers visiting the parents of convicted murderer Robert Wayne Williams on the night he was executed. Williams was the first person executed in Louisiana following the reinstatement of the death penalty. DeParle's first and lingering thought was that the family was "so average." Robert's mother was in her 60s and was polite, kind, and horrified about what was happening to their son and the crime he had committed.⁴ Not all offenders were raised in such average or loving homes. Many came from environments riddled with poverty and pain. Some were victims of horrifying child abuse, and others went to bed hungry for years. A number grew up in homes where the adults around them were unable to provide support and stability because they were dealing with their own demons: depression and other forms of mental illness, drugs and alcohol, and the aftermath of childhood or adult trauma. These families matter because they are members of our communities and in many cases their problems are symptoms of larger societal problems that have not yet been adequately addressed.

Most offenders who receive the death penalty come from oppressed and vulnerable populations that have a background of multigenerational poverty. Sarah, whose son Marcus killed the shopkeeper, worked several jobs at or below minimum wage so that she could provide food for her children. In cases like Sarah's, family members often weighed the consequences of not enough food or not enough supervision for their children, and food won. Sarah, like many other family members, never finished high school because she had to work to contribute to her parents' home. With little education, there were few options, and work was often exploitive. Sarah and other mothers like her were often unprepared and unable to put their energy into their child's emotional, cognitive, and spiritual development.

Several of the mothers we talked to left home and school when they began to menstruate because they feared that the rape they endured from their fathers, grandfathers, and brothers might result in a pregnancy. The consequences of murder compel us to ask how we as a society can intervene to break the cycle of violence. As their own stories reveal, executing a loved one does not break the cycle of violence but creates fresh wounds for these families, their communities, and future generations. By understanding families of capital offenders, communities gain greater insight into how to promote healthy, safe, and fulfilling environments. Restorative justice practice seeks just this kind of understanding by involving entire communities in responding to crime and preventing crime by addressing its root causes.